GOVERNMENT OF INDIA
COMMUNICATIONS AND INFORMATION TECHNOLOGY
LOK SABHA

UNSTARRED QUESTION NO:2540
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FDI IN TELECOM SECTOR
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Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

(a) whether the Government proposes to revise the guidelines on FDI in telecom sector;

(b) if so, the details thereof and the reasons therefor; and

(c) the time by which the guidelines are likely to be put into operation?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (DR. SHAKEEL AHMAD)

(a) to (c) Yes, Sir. Salient features of the decision are given in the Annexure. The National Common Minimum Programme (NCMP) declares that Foreign Direct Investment (FDI) will continue to be encouraged and actively sought, particularly in areas of infrastructure, high technology and exports. Telecommunications sector meets this description and accordingly, a decision has been taken to enhance the FDI ceiling from 49 per cent to 74 per cent after adequately addressing the concerns.

The guidelines for FDI in telecom sector are expected shortly.

ANNEXURE

INCREASE IN FDI CEILING TO 74 PER CENT IN TELECOM SECTOR

The Union Cabinet on 02-02-2005, approved a proposal to enhance composite foreign holding in Telecom Sector to 74 per cent. With this decision, the current FDI ceiling in the Telecom Sector in certain services (such as Basic, Cellular, Unified Access Services, National/International Long Distance, V-SAT, Public Mobile Radio Trunked Services(PMRTS), Global Mobile Personal communications Services (GMPCS) and other value added services, has been increased from 49 per cent to 74 per cent.

The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (FIIs), Non-Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRS), Global Depository Receipts (GDRs), convertible preference shares, Proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc., will not exceed 74 per cent. Thus, 74 per cent foreign investment can be made directly or indirectly in the operating company or lthrough a holding company. Hence, the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company (i.e. foreign direct investment does not exceed 49 per cent and the management is with the Indian owners). It is clarified that proportionate foreign component of such an Indian company will also be counted towards the ceiling of 74 %. The licensee will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on a half yearly basis.

While enhancing the FDI ceiling, certain conditions have been put in place to safeguard the national interest. The salient conditions are:

a) The majority Directors on the Board including Chairman, Managing Director and CEO shall be resident Indian citizens. The Share Holder Agreements (SHA) shall specifically incorporate this condition and also envisage the conditions of adherence to Licence Agreement.

b) In orders to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding, such resident Indian promoter shall hold at least 10 per cent equity of the licensee company.

c) Chief Technical Officer (CTO)/Chief Finance Officer (CFO) should be resident Indian citizens. The Licensor/DoT shall also be empowered to notify any key positions to be held by resident Indian citizens.

d). No traffic (mobile and landline) from subscribers within India to subscribers within India shall be hauled to any place outside India.

e). The Company shall not transfer the following to any person/place outside India:

i). Any accounting information relating to subscriber (except for roaming/billing) (note: it does not restrict a statutorily required disclosure of financial nature);

ii). User information (except pertaining to foreign subscribers using Indian Operator`s network while roaming); and

iii). Details of their infrastructure/network diagram except to telecom equipment suppliers/manufacturers who undertake the installation, commissioning etc. of the infrastructure of the licensee company on signing of non-disclosure agreement.

These conditions shall also be made applicable to the companies operating telecom service(s) with existing FDI ceiling of 49 per cent. With the above dispensation, the present provisions in FDI policy for investment company will no longer be applicable for Telecom sector as indirect foreign investment in the licensee company will also be counted towards sectoral cap of 74 per cent.

In case of not adhering to licence conditions now being imposed for addressing security concerns, the lincence(s) granted to the company shall be deemed as cancelled and the licensor shall have the right to encash the performance bank guarantees and the licensor shall not be liable for loss of any kind.